

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

William Earl Crane
SSN XXX-XX-0871

CASE NO. 04-33614 GFK

CHAPTER 13 CASE

Debtor.

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

TO: Debtor and other entities specified in Local Rule 3015-3.

1. The CIT Group/Consumer Finance, Inc. (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this objection at 10:30 a.m. on August 26, 2004, before the Honorable Gregory F. Kishel in Courtroom 228B at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on August 25, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than August 23, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed June 18, 2004. The case is now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.
6. Debtor is indebted to Secured Creditor in the principal amount of \$312,800.00, as evidenced by that certain Promissory Note dated December 20, 1999, a copy of which is attached hereto as Exhibit "A", together with interest thereon.
7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated December 20, 1999, executed by William Crane and Darryle Crane, husband and wife, as joint tenants, recorded January 6, 2000, as Document No. 1087788, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B".
8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).
9. Said plan is also objected to on the basis that Debtor is delinquent in his pre-petition monthly mortgage payments to Secured Creditor for the months of June, 2003 through June, 2004, in the total amount of \$43,176.77, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 26 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).
10. The value of the property as scheduled by Debtor is \$425,000.00 subject to Secured Creditor's mortgage in excess of \$372,590.56. The property is also subject to another Secured Creditor's mortgage in favor of Bank1One in excess of \$80,000.00, and a Statutory Lien in favor of Internal

Revenue Service in excess of \$34,722.00, as scheduled by Debtor.

11. The plan, as proposed, is not made in good faith by Debtor.
12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 16th day of August, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, Minnesota 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

08/10/04 12:28 FAX 9 405 553 4702

C.I.T

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NOTE

December 20, 1999

IRVINE

CALIFORNIA

(Date)

(City)

(State)

18590 ST CROIX TRAIL NORTH

MARINE ON ST CROIX, MINNESOTA 55047

(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 312,800.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is
NEW CENTURY MORTGAGE CORPORATION, A CALIFORNIA CORPORATION

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 9.6750 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 5(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on February 1, 2000. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on January 1, 2020, I still owe amounts under this Note, I will pay these amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 18000 VON KARMAN, SUITE 1000
IRVINE, CA 92612

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 2,670.23

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A prepayment of all of the unpaid principal is known as a "full prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment."

If within the first 42 months from the execution of the Security Instrument I make a full prepayment, I will pay a prepayment charge in an amount equal to the lesser of two (2) percent of the unpaid principal balance or 60 days interest on the unpaid principal balance.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits then: (i) any such loan charges shall be reduced by the amount necessary to reduce the charge to the permitted limits and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

MINNESOTA FIXED RATE NOTE - Single Family - Nonperforming

Page 1 of 3

2000 108(MN) (05/01)

THE MORTGAGE FORMS - (000521-001)

Notarized

EXHIBIT



08/10/04 12:29 FAX 9 405 553 4702

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WASHINGTON COUNTY

01-04-2000 Receipt No: 37948
 Registration fee hereon of \$719.44 Paid
 MN Conservation Fund M.S. 473H \$5.00 Paid
 Virginia R. Erdam, Auditor-Treasurer by Osimoneh

08/10/04 12:29 FAX 9 405 553 4702
 1087788 47041
 150 119
 1/2/15

NEW CENTURY MORTGAGE CORPORATION
 18400 VON KARMAN, SUITE 1000
 IRVINE, CA 92612
 Loan Number: 0000328591

(Space Above This Line For Recording Date)

MORTGAGE

100678336
 NORTH STAR TITLE
 BOX 70

THIS MORTGAGE ("Security Instrument") is given on December 20, 1998
 The mortgagor is
 WILLIAM CRANE AND PARRYLE CRANE, HUSBAND AND WIFE, AS JOINT TENANTS.

("Borrower"), This Security Instrument is given to
 NEW CENTURY MORTGAGE CORPORATION

which is organized and existing under the laws of CALIFORNIA
 address is 18400 VON KARMAN, SUITE 1000
 IRVINE, CA 92612

and whose

("Lender"). Borrower owes Lender the principal sum of

Three Hundred Twelve Thousand, Eight Hundred and No/100
 Dollars (U.S. \$ 312,800.00)

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which
 provides for monthly payments, with the full debt, if not paid earlier, due and payable on
 January 1, 2030 and for interest at the yearly rate of 9.8750

percent. This Security Instrument secures to Lender: (a) the repayment of
 the debt evidenced by the Note, with interest and all renewals, extensions and modifications of the Note; (b) the
 payment of all other sums, with interest advanced under paragraph 7 to protect the security of this Security

MINNESOTA-Single Family-FNMA/PHLMC UNIFORM INSTRUMENT

-6H(MN) (8703)

Form 3083 9/99
Amended 12/03

Page 1 of 8

-Hills-

MNF MORTGAGE FORMS - (200)631-7241

EXHIBIT B



08/10/04 12:29 FAX 9 405 553 4702

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Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in WASHINGTON County, Minnesota:
SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

A.P.N.: 18-031-19-24-0002

which has the address of 13330 ST CROIX TRAIL NORTH, MARINE ON ST CROIX (Street, City,
Minnesota 55047 (Zip Code) ("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.
2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the Federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lower amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentally, or solely (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an

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The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees.

21. Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument to Borrower. Borrower shall pay any reconduction costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

23. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

24. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. (Check applicable box(es))

☐ Adjustable Rate Rider
☐ Graduated Payment Rider
☐ Balloon Rider
☐ VA Rider

☐ Condominium Rider
☐ Planned Unit Development Rider
☐ Rate Improvement Rider
☐ Other(s) [specify]

☐ 1-4 Family Rider
☐ Biweekly Payment Rider
☐ Second Home Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Darryle Crane (Seal)
 DARRYLE CRANE -Borrower

William Crane (Seal)
 WILLIAM CRANE -Borrower

_____ (Seal)
 -Borrower

_____ (Seal)
 -Borrower

_____ (Seal)
 -Borrower

_____ (Seal)
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 -Borrower

_____ (Seal)
 -Borrower

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STATE OF MINNESOTA.

RANSEY

County ss:

On this 23rd day of DECEMBER, 1999, before me appeared
 DARRYLE CRANE AND WILLIAM CRANE, WIFE AND HUSBAND

personally known to me the person(s) described in and who executed the foregoing instrument and acknowledged that
 executed the same as true act and deed.


 Notary Public

My Commission Expires:

This instrument was prepared by NEW CENTURY MORTGAGE CORPORATION
 18400 VON KARMAN, SUITE 1000 IRVINE, CA 92612



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

William Earl Crane
SSN XXX-XX-0871

CHAPTER 13 CASE

CASE NO. 04-33614 GFK

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on August 16, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

William E. Crane
15530 St. Croix Trail North
Marine on St. Croix, MN 55047

Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

Urosh Piletich
1675 S. Greeley St., Ste 203
Stillwater, MN 55082

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 16th day of August, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

William Earl Crane
SSN XXX-XX-0871

Debtor.

CASE NO. 04-33614 GFK

This Chapter 13 Case came on before the Court on August 26, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed June 18, 2004, is denied.

Dated: _____
Judge of Bankruptcy Court